

**DECLARATION OF KEVIN McNALLY REGARDING PENALTY-PHASE
SENTENCING OPTIONS PRESENTED TO FEDERAL JURIES IN CAPITAL TRIALS
PURSUANT TO THE FEDERAL DEATH PENALTY ACT, 18 U.S.C. §3593**

1. I currently serve as the Director of the Federal Death Penalty Resource Counsel Project, assisting court-appointed and defender attorneys charged with the defense of capital cases in the federal courts. I have served as Resource Counsel since the inception of the Resource Counsel Project in January, 1992. The Project is funded and administered under the Criminal Justice Act by the Office of Defender Services of the Administrative Office of the United States Courts.

2. My responsibilities as federal resource counsel include the monitoring of all federal capital prosecutions throughout the United States in order to assist in the delivery of adequate defense services to indigent capital defendants in such cases. This effort includes the collection of data on the initiation and prosecution of federal capital cases.¹

¹The work of the Federal Death Penalty Resource Counsel Project is described in a report prepared by the Subcommittee on Federal Death Penalty Cases, Committee on Defender Services, Judicial Conference of the United States, FEDERAL DEATH PENALTY CASES: RECOMMENDATIONS CONCERNING THE COST AND QUALITY OF DEFENSE REPRESENTATION (May, 1998), at 28-30. www.uscourts.gov/dpenalty/1COVER.htm. The Subcommittee report “urges the judiciary and counsel to maximize the benefits of the Federal Death Penalty Resource Counsel Project ..., which has become essential to the delivery of high quality, cost-effective representation in death penalty cases” *Id.* at 50.

3. In order to carry out the duties entrusted to me, I maintain a comprehensive list of federal death penalty prosecutions and information about these cases. I accomplish this by internet news searches, by reviewing dockets and by downloading and obtaining indictments, pleadings of substance, notices of intent to seek or not seek the death penalty, and by telephonic or in-person interviews with defense counsel or consultation with chambers. This information is regularly updated and is checked for accuracy by consulting with defense counsel. The Project's information regarding federal capital prosecutions has been relied upon by the Administrative Office of the United States Courts, by the Federal Judicial Center and by various federal district courts.

4. Numerous district court have presented three penalty verdict options giving juries the option of a 1) unanimous vote for death, 2) unanimous vote for life or 3) a non-unanimous decision that will result in the imposition of a sentence other than death, usually life without the possibility of release. In some cases, judges have limited the jury to a single choice, simply asking jurors whether they unanimously agreed on a sentence of death or not. *See, e.g.*, the instructions and verdict sheets in the following cases:² 1) *United States v. Davis* (E.D. LA No. 94-CR-381); 2) & 3)

²Cases tried pursuant to 21 U.S.C. §848, or both statutes, are not included.

United States v. Hall and Webster (N.D. TX No. 94-CR-121-Y); 4) *United States v. Battle* (N.D. GA No. 95-CR-528-ODE); 5) & 6) *United States v. Johnson and Ray* (N.D. IL No. 96 CR 379); 7) *United States v. Jones* (D. MD No. 96-455-WMN); 8) *United States v. John Bass* (E.D. MI CR No. 97-80235); 9) *United States v. Dhinsa* (E.D. NY No. 97-CR-672 (ERK)); 10) *United States v. Holder* (E.D. MO No. 97-CR-141-ERN); 11) *United States v. Finley* (W.D. NC No. 98-CR-243); 12) *United States v. Higgs* (D. MD No. 98-520-PJM); 13) *United States v. Lightfoot* (W.D. MO No. 98-CR-149); 14) *United States v. Mohamed and al-Owhali* (S.D. NY No. S6 98-CR-1023); 15) *United States v. Gilbert* (D. MA No. 98-30044-MAP); 16) *United States v. Lyon* (W.D. KY CR No. 4:99-CR-11-M); 17) *United States v. Joseph Miner* (W.D. PA CR No. 99-215); 18) *United States v. Johnson* (E.D. VA No. 00-CR-26); 19) *United States v. Mitchell* (D. AZ No. 01-CR-1062-ALL); 20) & 21) *United States v. William and Rudy Sablan* (D. CO No. 00-CR-00531-WYD); 22) *United States v. Lightfoot* (W.D. MO No. 00-CR-395); 23) *United States v. Williams and Williams* (S.D. NY No. 00-CR-1008); 24) *United States v. Duong* (N.D. CA No. 5:01CR20154 JF); 25) *United States v. Fell* (D. VT No. 01-CR-12); 26) *United States v. Brown* (S.D. GA No. 01-CR-403); 27) *United States v. Frye* (D. MS No. 01-CR-8-BN); 28) *United States v. Purkey* (W.D. MO No. 01-308-FJG); 29) *United States v. Dixon* (E.D. NY No. 01-CR-389-ALL); 30) *United States v. Moussaoui* (E.D. VA

No. 01-CR-455); 31) *United States v. Sampson* (D. MA CR No. 01-CR-10384-ALL); 32) *United States v. James and Mallay* (E.D. NY CR No. 02-778 (S-1) (SJ)); 33) *United States v. Houston and Bridgewater* (C.D. CA CR No. 02-00938-GHK); 34) *United States v. Catalan-Roman and Medina Villegas* (D. PR CR No. 3:02-CR-117-ALL); 35) *United States v. Fulks* (D. SC No. 02-CR-992-FJA); 36) & 37) *United States v. Perez and Gonzales* (D. CT No. 02-CR-7-JBA); 38) *United States v. Breeden* (W.D. VA No. 03-CR-13-ALL); 39) *United States v. Edward Fields* (E.D. OK No. 6:03-CR-00073); 40) *United States v. Ayala-Lopez* (D. PR No. 03-CR-55); 41) *United States v. Baskerville* (D. NJ No. 03-CR-386-JAP); 42) *United States v. Mayhew* (S.D. OH No. 03-CR-165); 43) *United States v. Simmons* (W.D. VA CR No. 5:04-CR-00014-SGW-ALL); 44) *United States v. Barnes* (S.D. NY No. 7:04-CR-00186-SCR); 45) *United States v. Cisneros and Grande* (E.D. VA CR No. 04-CR-283-ALL); 46) *United States v. John Johnson* (E.D. LA No. 2:04-CR-00017-HGB-SS); 47) *United States v. McGriff* (E.D. NY No. 04-CR-966-FB); 48) *United States v. Natson* (M.D. GA No. 05-CR-21); 49) *United States v. Hans* (D. SC No. 6:05 CR 01227-HMH); 50) *United States v. Solomon* (W.D. PA No. 2:05-CR-00385-TFM); 51) *United States v. Timothy O'Reilly* (E.D. MI No. 05-80025); 52) *United States v. Vincent Basciano* (E.D. NY No. 05-CR-0060 (S-3) (NGG)); 53) *United States v. Lujan* (D. NM No. 05-924); 54) *United States v. Casey* (D. PR No. 3:05-CR-0277-JAG); 55)

United States v. Galan (N.D. OH No. 3:06-CR-00730-JGC-1); 56) *United States v. Henderson* (S.D. OH No. 2:06-CR-00039); 57) *United States v. Dinkins and Gilbert* (D. MD No. 1:06-CR-00309-JFM); 58) *United States v. Azibo Aquart* (D. CT 3:06CR160 (PCD)); 59) *United States v. Burgos-Montes* (D. PR No. 06-009 JAG); 60) *United States v. Williams* (D. HI No. 1:06-CR-00079-DAE); 61) *United States v. Green* (W.D. KY No. 5:06-CR-00019-TBR); 62) *United States v. Duncan* (D. ID CR No. 07-23-N-EJL); 63) *United States v. Savage, et al.* (E.D. PA No. 2:07-CR-00550-RBS); 64) *United States v. Richardson* (N.D. GA No. 1:08-CR-139); 65) *United States v. Byers* (D. MD No. 08-056); 66) *United States v. Runyon* (E.D. VA CR No. 4:08-CR-16); 67) *United States v. Candelario-Santana* (D. PR No. 3:09-CR-00427-JAF); 68) *United States v. McCluskey* (D. NM No. 1:10-CR-02734); 69) *United States v. Coonce and Hall* (W.D. MO 10-03029-01/02-CR-S-GAF); 70) *United States v. Sanders* (W.D. LA No. 1:10CR00351) and 71) *United States v. Briseno* (N.D. IN No. 2:11-CR-077).

I declare under the penalty of perjury under the laws of the United States of American, 28 U.S.C. §1746, that the foregoing is true and correct. Executed this 6th day of April, 2015.

/s/ Kevin McNally
KEVIN McNALLY